

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

28 copy  
FILED  
HARRISBURG

CHARLES ISELEY  
Petitioner,

v.

KATHLEEN ZWIERZYNA, et al,  
Respondents.

Civil No.  
1:CV-00-2186

FEB 20 2002

MARY E. D'ANDREA, CLERK  
Per [Signature]  
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BRIEF IN SUPPORT OF MOTION FOR AN EVIDENTIARY HEARING

As petitioner noted in his traverse to the return filed with the court, he is being held in prison illegally. He is beyond his maximum sentence.

Petitioner concedes that his sentence is illegal because of the sentence for 1576 being ordered to begin and take effect at the minimums of the other sentences. Com. v. Ward, 568 A.2d 1242 (Pa. 1990). He is not challenging his sentence. It is the respondents who refuse to abide by the signed sentence orders because of the illegal sentence. It is the signed sentence orders which determine and govern a criminal sentence. Com. v. Isabell, 467 A.2d 1287, 1292-93 (Pa. 1983); Com. v. Quinlan, 639 A.2d 1239-40 (Pa. Super. 1994); Com. v. Collins, 764 A.2d 1056 (Pa. 2001).

Whether the sentence is legal or illegal is irrelevant because it is the respondent's legal responsibility, not petitioner's, to move the sentencing court for modification of sentence. Com. v. Rohrer, 719 A.2d 1078 (Pa. Super. 1998); Quinlan, supra. They not do so. Only that court has the authority to modify a sentence Ward, supra. Com. v. Lyles, 464 A.2d 712 (Pa. Cmwlth 1983). Petitioner has a liberty interest in having his quantum of punishment be in conformity with the sentence imposed on him. Sample v. Diecks, 885 F.2d 1099, 1114 (3d Cir. 1989).

Wherefore an evidentiary hearing should be ordered forthwith.

Date: February 17, 2002

Respectfully submitted

Charles Iseley  
Charles Iseley  
AM-9320 1100 Pike St.  
Huntingdon, PA 16654

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing Motion for Evidentiary Hearing and brief in support of same by mailing copies of same to:

Karen Diaz, a.d.a.  
Office of Dist. Atty.  
Berks County Courts  
Doylestown, PA 18901

Date: February 18, 2002

Charles Iseley  
Charles Iseley